

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division**

ALIGN TECHNOLOGY, INC.,

Plaintiff,

v.

SMILES OF VIRGINIA FAMILY DENTAL
CENTER, PLLC and DR. NIELS
OESTERVEMB,

Defendants.

Civil Action No.5:22-cv-00038-MFU

JURY TRIAL DEMANDED

**PLAINTIFF ALIGN TECHNOLOGY, INC.'S
MOTION FOR EXTENSION OF TIME**

Plaintiff Align Technology, Inc. (“Align”), by counsel and pursuant to Federal Rule of Civil Procedure 6(b)(1)(A), respectfully moves this Court for an extension of time to file an amended complaint under Federal Rule of Civil Procedure 15(a)(1)(B) and to file its response to the counterclaims filed by Defendants Smiles of Virginia Family Dental Center, PLLC and Dr. Niels Oestervemb (collectively, “Defendants”) under Federal Rule of Civil Procedure 12(a)(1)(B). In support, Align states as follows:

1. Align originally filed its Complaint in this Court against Defendants on June 14, 2022. (ECF No. 1).
2. The Summons and the Complaint were served on Defendants on June 15, 2022. (ECF Nos. 7, 8). As a result, Defendants responsive pleadings were due on July 6, 2022. FED. R. Civ. P. 12(a)(1)(A)(i).

3. On July 6, 2022, Defendants requested Align's consent to an extension until July 15, 2022, to file their responsive pleadings. Align consented to this request, noting that it would not oppose the extension if Defendants would later agree to a similar extension for Align if needed, and noting that approval of the Court may be required to extend the deadline. Defendants did not request leave from this Court for the extension.

4. On July 15, 2022, Defendants filed an answer to Align's Complaint. (ECF No. 11). As a result, Align's deadline to file an amended complaint as a matter of right is August 5, 2022. FED. R. CIV. P. 15(a)(1)(B).

5. That same day, Defendants also filed counterclaims against Align. (ECF No. 12). Align's response to the counterclaims are due on August 5, 2022. FED. R. CIV. P. 12(a)(1)(B). Defendants' counterclaims allege seven new claims against Align seeking cancellation of several of its trademarks.

6. On August 3, 2022, Align requested Defendants' consent to a one-week extension to its deadlines under Rule 15(a)(1)(B) and Rule 12(a)(1)(B). Defendants have not yet responded to Align's request.

7. Defendants respectfully request a short extension of time to Friday, August 12, 2022 to file an amended complaint as a matter of right and to respond to Defendants' counterclaims.

8. There is good cause for this extension, as Align's counsel are still reviewing the counterclaims raised by Defendants in this case, which could result in the cancellation of Align's marks.

9. Further, this brief extension is necessary to defend against the seriousness of Defendants' requested relief, which would significantly impact Align's valuable intellectual

property and its business operations that rely on the marks at issue in this case. The consequences of Defendants' allegations require additional time to assess both Align's original Complaint and its responsive pleading to the counterclaims.

10. Align does not request this extension for the purpose of delay. Additionally, no party will be prejudiced by the requested relief sought.

11. Pursuant to Local Civil Rule 11(c)(2), a separate brief is not required in support of this Motion.

WHEREFORE, Align respectfully requests that this Motion be granted and that the Court enter the attached Proposed Order extending its time (a) to file an amended complaint under Federal Rule of Civil Procedure 15(a)(1)(B), and (b) to respond to the counterclaims under Rule 12(a)(1)(B) up to and including August 12, 2022.

Respectfully Submitted,

ALIGN TECHNOLOGY, INC.

By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that the attached pleading was filed on August 4, 2022 using this Court's CM/ECF filing service and, accordingly, a copy was provided to counsel of record.

/s/
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